



DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2016-0072]

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49 CFR Chapter XII

Retrospective Review of Existing Regulations – A Focus on Burden Reduction; Request for Public Input

AGENCY: Office of the General Counsel, DHS.

ACTION: Notice of Retrospective Review Initiative and request for comments.

SUMMARY: The Department of Homeland Security (Department or DHS) is seeking comments from the public on specific existing significant DHS regulations that the Department should consider as candidates for streamlining or repeal. These efforts will help us ensure that DHS satisfies its statutory obligations and achieves its regulatory objectives without imposing unwarranted costs.

DHS is seeking this input pursuant to the process identified in DHS's Final Plan for the Retrospective Review of Existing Regulations. According to the Final Plan, DHS will initiate its retrospective review process, on a three-year cycle, by seeking input from the public. Input that

will be most helpful to DHS is input that identifies specific regulations and includes actionable data supporting the nomination of specific regulations for retrospective review.

DATES: Written comments are requested on or before **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION.]** Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments, identified by docket number DHS-2016-0072, through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Charlotte Skey, Senior Regulatory Economist, Office of the General Counsel, U.S. Department of Homeland Security. Email: Regulatory.Review@dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to comment on this notice by submitting written data, views, or arguments using the method identified in the **ADDRESSES** section.

Instructions: All submissions must include the agency name and docket number for this notice. All comments received will be posted without change to <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov>.

II. Background

On January 18, 2011, the President issued E.O. 13563, “Improving Regulation and Regulatory Review,” to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals and that agencies give careful consideration to the benefits and costs of those regulations. 76 FR 3821. The Executive Order required each Executive Branch

agency to develop a preliminary plan to periodically review its existing regulations to determine whether any regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving its regulatory objectives.

DHS's approach to conducting retrospective review focuses on public openness and transparency and on the critical role of public input in conducting retrospective review. To that end, DHS published a notice and request for comments in the Federal Register on March 14, 2011. 76 FR 13526. In that notice, DHS solicited public input on how DHS should structure its retrospective review and which DHS rules would benefit from retrospective review. On June 6, 2011, DHS published a notice of availability; request for comments announcing the availability of, and seeking comment on, its Preliminary Plan for the Retrospective Review of Existing Regulations. 76 FR 32331. DHS considered this public input as it developed a Final Plan.

On August 22, 2011, DHS issued its Final Plan for the Retrospective Review of Existing Regulations (Final Plan or DHS Final Plan). The DHS Final Plan is available online at <http://www.dhs.gov/xlibrary/assets/dhs-ogc-final-retrospective-review-plan-8-22-11-final.pdf>. The Final Plan established a process for identifying regulations that may be obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. Under the Final Plan, DHS (and/or a DHS component) will publish a notice in the Federal Register every three years seeking public input regarding the regulations that should be subject to retrospective review. DHS published its previous Federal Register notice seeking such public input on February 26, 2014. 79 FR 10760. Today's notice, which requests nominations for existing significant DHS regulations that DHS should streamline or repeal, fulfills the DHS commitment to seek public input via the Federal Register on a three-year cycle.

DHS continually evaluates its regulatory program for rules that are candidates for retrospective review; DHS does so through legally mandated retrospective review requirements (e.g., Unified Agenda reviews, and reviews under section 610 of the Regulatory Flexibility Act) and through other informal and long-established mechanisms (e.g., use of Advisory Councils, feedback from DHS field personnel, input from internal working groups, and outreach to regulated entities). This Federal Register notice supplements these existing extensive DHS retrospective review efforts.¹

II. DHS's Regulatory Responsibility

DHS's mission is to ensure a homeland that is safe, secure, and resilient against terrorism and other hazards. The Department carries out its mission through the Office of the Secretary and its components, including the following operational components: U.S. Citizenship and Immigration Services, U.S. Coast Guard, U.S. Customs and Border Protection, Federal Emergency Management Agency, U.S. Immigration and Customs Enforcement, U.S. Secret Service, and Transportation Security Administration.

Leading a unified national effort, DHS has five core missions: (1) prevent terrorism and enhance security; (2) secure and manage our borders; (3) enforce and administer our immigration laws; (4) safeguard and secure cyberspace; and (5) ensure resilience to disasters. To further these areas, DHS has responsibility for a broad range of regulations. For example, to secure and manage our borders, DHS regulates people and goods entering and exiting the United States. DHS, to combat terrorism, regulates aviation security, high-risk chemical facilities, and infrastructure protection. DHS also issues regulations to administer immigration and citizenship

¹ Twice a year, DHS posts a progress report on the DHS website; the report provides the status of DHS regulations currently under retrospective review. DHS published its most recent progress report in July 2016, and the report is available on the DHS website at <http://www.dhs.gov/latest-progress> under "DHS July 2016 Retrospective Review Plan Report."

benefits as well as regulations covering maritime safety and environmental protection. Finally, DHS promulgates a wide range of regulations concerning disaster preparedness, response, and recovery.

III. Request for Input

A. Importance of Public Feedback

A central tenet of the DHS Final Plan is the critical and essential role of public input in driving and focusing DHS retrospective review. Because the impacts and effects of a regulation tend to be widely dispersed in society, members of the public—especially the regulated entities of rulemakings—are likely to have useful information, data, and perspectives on the benefits and burdens of existing DHS regulations. Given this importance of public input, the primary factor for regulation selection in DHS retrospective review is public feedback.

B. Maximizing the Value of Public Feedback

This notice contains a list of questions, the answers to which will assist DHS in identifying those regulations that may be streamlined or repealed in order to reduce burden. DHS encourages public comment on these questions and seeks any other data commenters believe are relevant to DHS's retrospective review efforts. The DHS Final Plan provides instruction on the type of feedback that is most useful to the Department.

DHS will afford significantly greater weight to feedback that identifies specific regulations, includes actionable data, or provides viable alternatives that meet statutory obligations and regulatory objectives. Feedback that simply states that a stakeholder feels strongly that DHS should change a regulation, but does not contain specific information on how the proposed change would impact the costs and benefits of the regulation, is much less useful to DHS. DHS is looking for new information and new economic data to support any proposed changes. [emphasis added]

We highlight a few of those points here, noting that comments that will be most useful to DHS are those that are guided by the below principles. Commenters should consider these principles as they answer and respond to the questions in this notice.

- For this notice, DHS is focusing on reducing the burdens of its regulations and is not seeking comment on actions that might increase the net cost of the DHS regulatory program.
- Commenters should identify, with specificity, the regulation at issue, providing the Code of Federal Regulations (CFR) cite where available.
- Commenters should provide, in as much detail as possible, an explanation why a regulation should be streamlined or repealed in order to reduce burdens, as well as specific suggestions of ways the Department can better achieve its regulatory objectives.
- Commenters should provide specific data that document the costs, burdens, and benefits of existing requirements. Commenters might also address how DHS can best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations and whether there are existing sources of data that DHS can use to evaluate the post-promulgation effects of its regulations over time.
- Particularly where comments relate to a rule's costs or benefits, comments will be most useful if there are data and experience under the rule available to ascertain the rule's actual impact. For that reason, we encourage the public to emphasize those rules that have been in effect for a sufficient amount of time to warrant a fair evaluation.
- Comments that rehash debates over recently issued rules will be less useful.

C. List of Questions for Commenters

We provide the below nonexhaustive list of questions to assist members of the public in the formulation of comments, and we do not intend it to restrict the issues that commenters may address:

- (1) Are there regulations that simply make no sense or have become unnecessary, ineffective, or ill-advised and, if so, what are they? Are there regulations that can simply be repealed without impairing the Department's regulatory programs and, if so, what are they?
- (2) Are there regulations that have become outdated and, if so, how can DHS modernize them to accomplish our regulatory objectives at a lower cost?
- (3) Are there regulations that are still necessary, but have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?
- (4) Does the Department currently collect information that it does not need or use effectively to achieve regulatory objectives?
- (5) Are there regulations that are unnecessarily complicated or that DHS could streamline to achieve regulatory objectives in more efficient ways? If so, how can DHS make them less complicated and/or more streamlined?
- (6) Are there regulations that have been overtaken by technological developments? Can DHS leverage new technologies to streamline or do away with existing regulatory requirements?
- (7) Are there any Departmental regulations that are not tailored to impose the least burden on society, consistent with achieving statutory obligations and regulatory objectives?
- (8) How can the Department best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data the Department can use to evaluate the post-promulgation effects of regulations over time?

(9) Are there regulations that are working well that minimize burden and that DHS can use as a model for other DHS regulatory programs?

(10) Are there any regulations that create difficulty because of duplication, overlap, or inconsistency of requirements?

The Department issues this notice solely for information and program planning purposes. Responses to this notice do not bind DHS to any further actions related to the response.

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